

**WETLANDS RESERVE PROGRAM  
RESTORATION COST-SHARE AGREEMENT  
VIOLATIONS**

**CAUSES:**

- (a) Noncompliance. Failure to comply with all terms and conditions of the contract is noncompliance. This includes but is not limited to, failure to carry out the long term contract as scheduled, failure to begin within a 12-month period, failure to meet specifications for establishing practices, failure to satisfactorily complete or maintain all contract items, or failure of a practice because of circumstances within the control of the participant. If the participant removes the cause for noncompliance, a violation can be avoided.
- (b) Practice destruction. Destruction of a practice established under the terms of the contract without the approval of the NRCS or failure to apply compensatory treatment for a destroyed practice.
- (c) False application for payment. Filing a false application for cost-share payments.
- (d) Failure to complete contract items. Failure to satisfactorily complete all contract items before the contract expires.
- (e) Transfer of land under contract. If the transferee will not assume the obligations of the contract with respect to the transferred acreage, the transferor is subject to forfeiture and refund of payments received on the transferred acreage.
- (f) Discontinuation of an activity. If, upon notification by NRCS to discontinue application of a contract item because it may destroy or adversely impact an endangered species, significant cultural resource or historic property that is known or suspected to be present, the participant elects to continue with the installation of the practice.

**DETERMINATION OF VIOLATIONS:**

- (1) If noncompliance is not resolved, the local NRCS office is to furnish the State Conservationist any information obtained that indicates a violation may have occurred. In every instance, the NRCS is required to ascertain if a violation has occurred and, if so, determine if a forfeiture, refund, payment adjustment, or termination is warranted.
- (2) The State Conservationist is to determine whether a violation or noncompliance did occur, and if the violation was of such a nature that a penalty of forfeiture, refund, payment adjustment or termination is necessary.
- (3) If a violation is apparent and forfeiture, refund, payment adjustment, or termination is required, the NRCS will send the participant a Notice of Preliminary Decision and Form NRCS-LTP-151. This notice is to be forwarded to the participant by certified mail-return receipt requested. A copy of the notice will be furnished to the NRCS State Office.
- (4) If no violation occurred, or the violation was of such a nature that no penalty of forfeiture, refund, payment adjustment, or termination is necessary, no notice will be issued, and no further action will be taken.



## VIOLATION PROCEDURES:

- (a) Scope. This section prescribes the regulations dealing with contract violations. No cost-share payment shall be made pending the decision on whether a contract has been violated.
- (b) Contents of Preliminary Decision. The Preliminary Decision will include the following information:
  - (1) The nature of the violation or noncompliance.
  - (2) The participant's right to request a field visit to gather additional information and discuss the facts concerning the preliminary decision.
  - (3) Notice that the preliminary decision will become final 30 days after issue, if a field visit is not requested.
- (c) The Field Visit. A field visit should be conducted with the participant, NRCS, and a representative of the Conservation District, at the option of the district. Field visits should be conducted within 15 days of receipt of a request, unless there are delays due to weather. During the field visit the participant will be provided:
  - (1) an explanation regarding the basis for the preliminary decision, including information about the science and program rules impacting that decision; and
  - (2) an opportunity to provide any additional information relevant to the decision.

The basis for the preliminary decision will be documented in the administrative record.
- (d) Notice of Final Decision. Following the field visit, or 30 days after the Preliminary Decision is issued, the designated conservationist will issue a Final Decision. All Final Decisions will be in writing, and will be sent certified mail, return receipt requested, or hand delivered. The final decision shall include the participant's rights to:
  - (1) Mediation;
  - (2) An informal hearing before the State Conservationist; or
  - (3) A hearing before a National Appeals Division Hearing Officer in accordance with 7 CFR 11.

## MEDIATION:

Mediation is a process in which a trained, impartial person helps people to look at their mutual problems, identify and consider all available options, and determine if they can agree on a solution to the dispute that is within the statutory and regulatory provisions. In mediation, NRCS representatives will try to set a positive, constructive tone, encouraging others to do the same. Mediation is private, confidential, and informal.

- (a) Preparing for mediation. In preparation for mediation, NRCS should do a field visit, if one has not already been done, to ensure that the Preliminary Decision is correct and that all possible solutions are reviewed before mediation occurs.
- (b) Deadlines for completion. The parties shall have not more than 30 days in which to reach an agreement. The mediator shall notify the designated conservationist in writing at the end of the period whether the parties reached an agreement.



- (1) Any agreement reached during, or as a result of, the mediation process shall conform to the statutory, regulatory, and manual provisions governing the program.
- (2) If the parties fail to reach an agreement within the specified period, the designated conservationist shall have 30 days after the mediator informs the parties that the mediation did not result in an agreement to issue a final decision.
- (c) Paying for mediation. If requested by the participant, NRCS shall pay appropriate and reasonable costs associated with securing the services of a mediator. NRCS shall have the final discretion over what is considered appropriate and reasonable.
- (d) Mediator contact. The participant will make all the necessary contacts to arrange for mediation. After selection of a mediator, the participant should inform NRCS that mediation is being requested.

#### APPEALS TO THE STATE CONSERVATIONIST:

After receiving a Notice of Final Decision from the designated conservationist, any participant may appeal the decision to the State Conservationist. A request for a hearing filed by a participant is considered to be a request by all participants who signed the contract. The request also supersedes any further bills for collection and interest charges if the violation involves refunds.

- (a) Appeal Requirements. Each request for reconsideration or appeal shall be in writing and signed by the participant or authorized representative and shall provide the reasons why the participant believes that the facts of the case were not given proper consideration, or the law was incorrectly applied to the facts.
- (b) Appeal Deadline. A request for appeal from any decision shall be filed within 30 days after the written notice is mailed to or otherwise made available to the participant.
- (c) Late-filed Appeals. A request for appeal may be accepted and acted upon even though it is not filed within the time prescribed, if, in the judgment of the NRCS reviewing authority with whom the request is filed, the appellant shows good cause for not appealing within 30 days.
  - (1) The following are examples of good cause:
    - (i) NRCS decision was delayed in reaching the person. Refusal to receive a decision does not extend the time period.
    - (ii) Failure of NRCS to inform the person of appeal rights and provide the name and address of the next appeal level.
    - (iii) Conditions beyond the control of the participant, such as serious illness, being called into military service, etc.
  - (2) The following are not considered to be good cause:
    - (i) Change in ownership or operator.
    - (ii) Intent of the appellant to obtain additional data to support the appeal. The participant should appeal within the time limits and then request additional time to collect information.
- (d) The Appeals Hearing. The appeal hearing proceeding shall be conducted with either an oral and written presentation or only a written presentation, as the participant specifies in the request. The hearing authority will:



- (1) Determine the time and place of the hearing. A reasonable effort will be made to schedule the hearing at a time convenient to the appellant.
- (2) Provide adequate notice to the appellant.
- (3) Accommodate, as much as possible, for unusual circumstances such as special assistance with a foreign language or sign language interpreter; conducting the hearing by telephone if travel is difficult; or the assignment of a staff person or conservation district official to assist with interpretation of written materials.

(e) Hearing Participants. Persons other than the participant or authorized representative with personal or expert knowledge of the matters in dispute may make presentation on behalf of either party.

(f) Failure to Appear. If the participant or authorized representative does not appear at the scheduled time of the hearing, the reviewing authority may conclude the hearing. The reviewing authority may accept written information and evidence submitted by other persons at the hearing. If the participant does not appear at the hearing, the reviewing authority may make a decision based on the facts available, including any additional material previously submitted by the participant.

(g) Hearing Records. The administrative record should include either a transcript, recording, or a summary of the informal hearing. A verbatim transcript will be made if requested by the appellant, who pays the costs, or if requested by the reviewing authority, in which case, NRCS assumes the cost. If no transcript is made, the preference is to record the hearing on cassette and include the cassette in the administrative record.

(h) Decisions. The NRCS reviewing authority, prior to making a decision, may request the client to produce additional evidence deemed relevant, or may develop additional evidence from other sources. The reviewing authority may affirm, modify, or reverse any decision made initially by the reviewing authority or a lower reviewing authority, or may remand the matter to a lower reviewing authority for further consideration as deemed appropriate. The participant shall be notified of the decision in writing.

Copies of documents, information, or evidence upon which a decision is made or which will form the basis of the decision shall be made available to the participant upon request. Any participant who is adversely affected by a decision of the State Conservationist may appeal to the National Appeals Division in accordance with regulations in 7 CFR 11. Where refunds are due, the appeal supersedes bills for collection and interest.